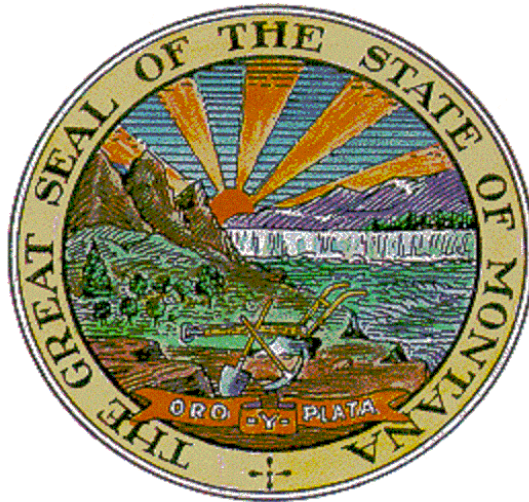


State of Montana
Department of Labor and Industry
Business Standards Division

PROGRAM SPECIFIC STATUTES RELATING TO CONSTRUCTION BLASTERS



ISSUED BY:

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**TITLE 37
CHAPTER 72
PART 1 – 3**

CONSTRUCTION BLASTING

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Chapter Cross-References

Regulation of explosives and inflammable material by local governments, 7-33-4205.

Part 1

General

37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of labor and industry;

(d) "explosive" has the meaning provided in 61-9-102.

(3) This chapter does not apply to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e).

History: En. Sec. 1, Ch. 402, L. 1985; amd. Sec. 94, Ch. 370, L. 1987; amd. Sec. 54, Ch. 83, L. 1989; amd. Sec. 47, Ch. 613, L. 1989; amd. Sec. 1, Ch. 514, L. 1995; amd. Sec. 154, Ch. 483, L. 2001; amd. Sec. 39, Ch. 542, L. 2005.

Cross-References

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

37-72-102. Penalty -- injunction. (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, 37-72-301, 37-72-302, 37-72-304, 37-72-305, or 37-72-307 or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.

History: En. Sec. 12, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 120, Ch. 467, L. 2005.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Part 2

Regulation by Department of Labor and Industry

Part Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Destructive device and explosive defined, 45-8-332.
Reckless or malicious use of explosives, 45-8-333.
Possession of destructive device, 45-8-334.
Possession of explosives, 45-8-335.
Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

37-72-201. Rules for use of explosives -- variances. (1) The department shall adopt rules governing the use of explosives in construction blasting. The rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction magazine in which they are kept;
(b) prevent the accidental detonation of explosives;
(c) prevent injury from blasting to persons and property near blast sites;
(d) provide for notification of blasting to the owners or operators of gas and electric utilities; and
(e) regulate the drilling of holes for explosives and the loading and firing of explosives.

(2) The department shall adopt rules providing for variances from the rules required by subsection (1). Variances may be granted by the department on a case-by-case basis for the purpose of individual construction blasting operations only if it is shown by the affidavit of a construction blaster licensed under this chapter that:

(a) compliance with the rule for which a variance is sought would be impracticable; and
(b) the proposed variance from department rules will not constitute a danger to property or public safety.

History: En. Sec. 9, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-202. General rulemaking power. The department shall adopt rules to:

(1) implement the training and experience requirements of 37-72-302;
(2) prescribe the amount of the fees provided for in 37-72-301, 37-72-304, and 37-72-305, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;
(3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation under 37-72-203(2), the department does not have the power under this chapter to make inspections

into construction blasting and may not adopt rules providing for inspections related to construction blasting or for inspectors to carry out inspections related to construction blasting;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the department under this chapter and govern department proceedings under 37-72-203.

History: En. Sec. 10, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 121, Ch. 467, L. 2005.

37-72-203. Revocation, suspension, or refusal to renew license -- grounds - procedure. (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand him or to revoke, suspend, or refuse to renew his license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

History: En. Sec. 11, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

"Destructive device" and "explosive" defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

Part 3

Licensing

Part Cross-References

Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

37-72-301. General qualifications. A person making initial application to the department for a license as a construction blaster shall:

- (1) pay an application fee to the department; and
- (2) furnish proof under oath, on a form provided by the department, that he:
 - (a) is at least 18 years old;
 - (b) is of good moral character;
 - (c) has not been convicted of a felony or misdemeanor involving the use of explosives;
 - (d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and
 - (e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department.

History: En. Sec. 2, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-302. Training and experience requirements. (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the department, that the person has:

- (a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the department; and
- (b) at least 2 years of experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) A training program may not be approved by the department unless the program offers comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The department shall by rule adopt a list of approved training programs.

History: En. Sec. 3, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 100, L. 1997.

37-72-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 4, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 196, L. 2003.

37-72-304. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number.

History: En. Sec. 5, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 23, Ch. 196, L. 2003.

37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of an application and application fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a

certificate, license, or permit, issued by another state or any agency of the United States, allowing the person to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 and 37-72-302.

History: En. Sec. 6, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 196, L. 2003; amd. Sec. 122, Ch. 467, L. 2005.

37-72-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 7, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 52, Ch. 492, L. 1997; amd. Sec. 59, Ch. 271, L. 2003.

37-72-307. License -- form -- pocket card. (1) The department shall prescribe the form of license.

(2) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

History: En. Sec. 8, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.